



Chemical Industry Council of California

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RE: Informal Comments Regarding DTSC SB 673 Draft Regulatory Framework Concepts

SB 673 is an ambitious statute that is clearly aimed at enhancing the State's responsiveness to the plight of disadvantaged communities differentially impacted by pollution from nearby hazardous waste facilities. The recent substantial amendments to the Hazardous Waste Permitting Regulation are directly responsive to this mandate. That revised regulation is already translating SB 673 into a very demanding and burdensome expansion of an already challenging regulatory gauntlet. In attempting to assure responsiveness to the EJ mandates of SB 673, that permit amendment is already threatening to drift afield of the primary regulatory standards and authorities the Department is charged with advancing.

Fails to convey a balanced expectation of what DTSC can actually deliver – implying more than it can deliver for EJ constituency

Clearly responsive to EJ concerns but fails to address question of DTSC's responsibility to deliver a safe, effective hazardous waste management system to service the State's needs.

Confusing with respect to whether/how this will be integrated within the existing structure of mandates and authorities for which DTSC remains responsible, with respect to HW; or if this is being thought of as a separate "super-level" consideration and if so, when and how that comes into play.

Seems to be putting CalEnviroScreen integrated ranking forward as a determinant regulatory standard, but such a role raises legal questions, not least for the scientific foundation of the standard.

Raises profound questions about the potential of facilities to be constrained in their operations or even denied permits without directly considering the actual linkage, if any, between the facilities emissions and environmental exposures relevant to the documented problems of the community.

SPECIFIC COMMENTS - EXERPTS FROM DTSC DRAFT (by page number, in order of appearance on page)

1 Senate Bill 673 (SB 673, Chapter 611, Stats. 2015) directed the Department of Toxic Substances Control (DTSC or the Department) to update its **criteria to consider "the vulnerability of, and existing health risks to, nearby populations"** when deciding whether to issue new or modified permits or permit renewals of hazardous waste facilities. SB 673 also authorizes **DTSC to consider the use of "minimum setback distances** from sensitive receptors" in making a permitting decision. **"To consider" is not a mandate to set up a separate review process or level; rather it is to find means of incorporating consideration within the larger permit review process – but that is already done via the permit reg amendment.**

2 These draft regulatory framework concepts incorporate the CalEnviroScreen 3.0 tool developed by the Office of Environmental Health Hazard Assessment (OEHHA) **and recognize ongoing actions by the California Air Resources Board and local air pollution control and air quality management districts to implement Assembly Bill 617** (AB 617, chapter 136, stats. 2017). *Not at all clear how DTSC intends to deal with this coordination, esp when it seems intent on developing differing standards (see excerpts from CARB 617 Strategy, appended below with comments).*

2 Permitted Facilities in California

California currently has 81 facilities with active hazardous waste permits (excluding post-closure permits). Permits are generally issued for 10 years; however, permits may be issued for a shorter term based on certain factors such as the facility's compliance history. The Department reviews applications for new hazardous waste facility permits, and for modification or renewal of existing hazardous waste facility permits. **These regulatory concepts address operating facilities when they apply for a new permit, permit modification, or renewal.** *POSITIVE: Key notion as it limits demands on both industry and the Department*

3 There are several tools currently available to characterize cumulative impacts and community vulnerability in California communities and provide comparisons of environmental, health and socioeconomic characteristics. **The most robust tool, CalEnviroScreen 3.0 (CES 3.0),** is the science-based mapping tool developed by OEHHA and used by CalEPA and its boards, departments, and offices (BDOs). *The tool has its limits and its "robustness" is not at all a matter of general acceptance – not designed as permitting tool*

3 The Department intends **to consider pollution impacts across environmental media and factors in the local environment that affect responses to that pollution** in this framework. However, the Department **is not proposing to assume direct regulatory authority over these environmental media or other factors**. Rather, the Department is considering mechanisms to support and augment the actions of the primary regulatory agencies with jurisdiction, through coordination and collaboration. *Draft seems to imply far more direct action than the statement above implies – CARB emphasizes its limits in 617*

3 First, the Department would **review and assess information about all the operating hazardous waste facilities, including size, facility characteristics, and hazardous waste activities** (or planned activities, in the case of new facilities) **to assist in determining the action pathway that best fits the facility's potential impact on the community and its needs.** *How does this relate to the intent on page 2 to focus on facilities when they apply for permits – what are the extra demands on staff/facilities for this review?*

3 the Department would **combine information from individual facility assessments** (including size, characteristics, and activity information), **together with the CES 3.0 percentile** of the community surrounding the hazardous waste facility, to place facilities on one of three facility action pathways to address cumulative impacts and community vulnerability *This seems questionable, since the CES score integrates a much broader range of considerations – it could allow a facility that makes no contribution to the environmental ills of the community to get swept into a high tier simply because it is getting swept along by larger forces.*

4 (substantially repeated on pg 8) *It is important to note that health impacts, facility compliance history, risk assessment findings, cumulative impacts, community vulnerability, and other factors **are***

part of the total record of information considered in making decisions on permit renewals, permit modifications, or new permits. The Department is considering the range of possible actions that could be taken **specifically based on the level of cumulative impacts and community vulnerability in communities surrounding hazardous waste facilities, up to and including permit denial.** This seems to declare the Department to be in search of means of denying permits – clearly in line with desires of many EJ advocates, but how does that fit within the Departments large responsibilities and authorities? The facility's permit must be based upon that total record. The record should include consideration of community characteristics it could aggravate (or ameliorate), but these are already integrated via the Amendments to the Regulation. The highlighted text implies a separate standard of community characteristics that would be applied completely independently of the permit record – absolutely wrong!

4 Following are some suggested criteria the Department could use in recommending that facilities be placed on action pathways. **For facilities that do not fall within the criteria listed below, the Department could determine the appropriate pathway based on consideration of the current or potential hazard of facility activities,** CES 3.0 scores, and other measures of cumulative impacts and community vulnerability, as well as community input. The highlighted statement seems to imply that the current or potential hazard of facility activities is not a consideration in the primary tiering criteria. How can you make permitting decisions that fail to take into account hazard? ...and if it is incorporated, what is the rationale for this statement?

1) The facility assessment shows **a high level of potential impact** on the community. **Factors to be considered in the facility assessment include: facility size; number and type of environmental permits, including hazardous waste permits; type and amount of hazardous waste managed, stored, or disposed at the facility;** facility proximity to sensitive receptors; the number of truck trips generated by the facility within the surrounding community; and the **CES 3.0 hazardous waste indicator score** for the census tract that the facility is located in. For new facilities, the Department would consider potential impacts of planned operations at the facility. This seems to make a presumption that size, existing permits, type of waste, etc., are surrogates for risk. How can you defend a process that fails to take into consideration actual environmental releases and their relation to the specific problems borne by the community? ...how can you take permit action that fails to take into consideration the contribution to the problem you are seeking to address by these super-permitting obligations?

5 2) The highest CES 3.0 ranking for the census tracts within a half-mile of the facility is in the 90th percentile or higher compared to other census tracts in the state.

CalEPA has designated communities in the top 25th percentile of CES 3.0 scores to be disadvantaged communities under SB 535. The **Department is considering whether to adjust the Tier 1 criteria to a level below the 90th percentile, and possibly to the 75th percentile to include all areas designated as "disadvantaged."** The Department is also **requesting peer-reviewed research demonstrating potential facility impacts to a larger area around the facility than the suggested half-mile buffer** in order to determine the level of scientific support for using cumulative impacts and community vulnerability assessments for a larger area. This sounds as if you are asking only for research that supports the notion that the ½ mile buffer is inadequate. How can that yield unbiased information?

5 (Tier 2) 2) The highest CES 3.0 ranking for the census tracts within a half-mile of the facility is in the 65th percentile or higher but below the 90th percentile.

Consistent with the proposed adjustment to the CES 3.0 criteria in Tier 1, the Department is considering whether to **adjust the Tier 2 criteria to a level in the range of the 50th percentile or higher and lower**

than the 75th percentile. *What is the rationale for and the implications of declaring ½ the State to be “disadvantaged” – on the surface this seems ludicrous.*

The Department is also **requesting peer-reviewed research demonstrating potential facility impacts to a larger area** around the facility than the suggested half-mile buffer in order to determine the level of scientific support for using cumulative impacts and community vulnerability assessments for a larger area. *This really appears to be a declaration that the department is desperately seeking any means possible to deny permits and shut down facilities. How does that comport with the broader range of the Department’s responsibilities, to ensure provision of an appropriate hazardous waste system?*

5 (Tier3) 1) The facility assessment shows a low level of potential impact on the community. Factors to be considered in the facility assessment include: facility size; number and type of environmental permits, including hazardous waste permits; type and amount of hazardous waste managed, stored, or disposed at the facility; facility proximity to sensitive receptors; **the number of truck trips generated by the facility** within the surrounding community; and the score for the hazardous waste indicator within CES 3.0 for the census tract that the facility is located in. For new facilities, the Department would consider potential impacts of planned operations at the facility. *CARB is very clearly declaring diesel vehicles to be their responsibility, to be handled Statewide. Coordination needs to be more expressly provided-for here.*

7 The Department would conduct a review to ensure the Department **is using the best data sets and most up-to- date and comprehensive information** about environmental conditions and community vulnerability to assess cumulative impacts and community vulnerability around the facility.

Examples of supplemental cumulative impacts and community vulnerability data the Department could review at the permitting stage could include:

- **_Air or water** (surface or groundwater) monitoring data generated by governmental or community monitoring networks implemented pursuant to AB 617, or other data of similar quality
- **_Cumulative impacts and/or community vulnerability collected pursuant to this framework, or as part of a study approved or accepted by the Department**
- **_risk to the community from diesel truck trips** generated to and from the facility and diesel equipment operated at the facility
- **_Risk pursuant to hazardous waste facility risk assessment** or a facility risk assessment pursuant to the AB 2588 Hot Spots Information and Assessment Act
- **_Facility violation history**
- **_Designation of a cumulatively impacted community by another state or local regulatory agency** *Per second bullet, shouldn’t the data in these categories be subject to the same caveat of acceptance by the Department per their standards for QA and QC?*

7 **In addition to information previously required for hazardous waste permits**, the Department could require any facilities that have been initially placed on a Tier 1 or Tier 2 Facility Action Pathway to submit an **expanded inventory of potential facility releases, emissions and discharges** as part of the **permit renewal application**. The enhanced inventory would include all information required in 66270.14 (e)(5) as well as the submission of additional available data on facility emissions and discharges (including Toxics Release Inventory data) and **on known and potential sources of chemicals of potential concern beyond those activities related to permitted units at the facility**. *How is this not part of the information already required for permitting? ...and if it’s justified, why isn’t it being picked up in the permitting amendments?*

7 **Collaborative Review Pathway for Cumulative Impacts and Community Vulnerability**

An alternative pathway is envisioned for facilities that opt to work with the Department, community organizations, and local government agencies to develop and submit a community agreement for mitigation, monitoring, and community outreach. What are the requirements for “community”? ...what does this whole process deem to be a “community” and what organizations does it empower to represent the community?

8 the applicant could be allowed to bypass the requirement for the submittal of additional facility specific data on cumulative impacts and community vulnerability at the permit application stage, including the expanded inventory of potential facility releases and the expanded sources of chemicals of potential concern documentation.

Tier 1 Action Pathway: Mitigation, Monitoring, and Community Engagement

Those on this pathway could be required to:

- Prepare a **Community Engagement Plan (CEP)** for the Department’s approval. The plan would be subject to DTSC review and approval to determine if the plan meets DTSC standards for community involvement and responsiveness to community needs in the development and content of the CEP. The above seems to carry the assumption that either the CEP somehow is deemed to address the contributing elements of the cumulative burden, or that the Department is effectively absolving itself of concern over those elements and that cumulative burden. It also absolutely begs for much more precise direction with respect to what “community” is considered to be the legitimate representative of the “disadvantaged community” at issue – particularly since the plight of such communities almost always reflects a degree of disenfranchisement from the responsible and recognized local government authorities. In the AB 617 Blueprint, CARB goes to extraordinary lengths to dictate the terms under which they would be willing to declare a “community” to be duly represented even for purposes of an advisory role. Here, you are declaring a willingness to effectively sign-away a degree of specific legal permitting responsibility by recognizing a “community” where one does not exist in the sense of a formally represented governmental authority.

APPENDIX

Excerpts from CARB-adopted Community Protection Blueprint for implementing AB 617

Potentially relevant considerations not addressed by DTSC SB 673 Concept Paper

A-9 CARB is committed to ongoing collaboration with communities, air districts, affected industry, and other stakeholders to continually review and improve the Program. Industry role/rights

C-5 Cumulative air pollution exposure impacts are driven by multiple air pollutants, and our understanding of the interactions between pollutants and the potential for synergistic health impacts between air pollutants is still an emerging field of research. Community emissions reduction programs will therefore focus on reducing individual criteria air pollutant and/or toxic air contaminant emissions to address the impacts of exposure to multiple pollutants. Focus on existing mandates, authorities

C-6 While significant work remains to meet ozone standards in many areas of the State, ozone pollution is driven by regional rather than localized source contributions and is most appropriately addressed through regional air quality improvement efforts like the State Implementation Plan. Focus on impacts resulting directly from emissions of affected facilities

C-18 CARB recognizes that, in many cases, the authority for implementing these goals will reside with local government agencies. Air districts (and CARB where appropriate) will identify appropriate strategies and approaches to engage with these agencies in an effort to obtain these goals where the air district's regulatory authority is limited. Recognize fundamental governmental authority over land use rests at local level

C-21 the (BARCT) schedule must consider community public health and clean air benefits, cost-effectiveness, and air quality and attainment benefits.

C-21 The community emissions reduction programs must identify the categories of sources impacting the community that will be subject to these requirements and ensure review and implementation of BARCT measures as applicable. Community programs focused on sources actually impacting community

C-35 CARB staff will recommend rejection for community emissions reduction programs that are missing significant elements or are inadequate in their likelihood of delivering emissions reductions within the community. QA/QC standards must be maintained

D-3 ...this Blueprint supports identification, design, and implementation of emissions and exposure reduction strategies related to these policies, including:

- Inclusion of local government agencies on community steering committees, identify land use and transportation strategies that could reduce exposure within the community, and include specific engagement mechanisms to advocate for these strategies. Fundamental authority over land use

E-8 Community members have detailed knowledge and awareness of community issues based on their experience of living and working in the community. Leveraging this knowledge and that of the air district to define community-specific air monitoring needs will form the foundation of the entire air monitoring process. Ensuring governmental arbiter

E-12 Once the methods and equipment are selected, defining quality control procedures and data management steps help ensure the resulting data is useful to inform the stated community-specific purpose for air monitoring and all parties can understand how the data was generated. QA/QC